COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

ADVANCING GLOBAL COMMUNICATIONS THROUGH COMPETITION

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CompTel®

December 18, 2002

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket Nos. 01-338, 98-147, and 96-98

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the Competitive Telecommunications Association ("CompTel") hereby gives notice that on December 17, 2002, its representatives, and representatives of its member companies, separately met with Commissioner Kevin Martin and Dan Gonzalez, Senior Legal Advisor to Commissioner Martin; Commissioner Kathleen Abernathy and Matt Brill, Senior Legal Advisor to Commissioner Abernathy; and Jordan Goldstein, Senior Legal Advisor to Commissioner Copps. In each of our meetings, CompTel discussed the impairment that competitive wholesale customers face without access to ILEC dark fiber. CompTel also explained that dark fiber should be defined as a separate UNE. During each meeting, our discussions followed the attached slide presentation.

In attendance at the meetings were: Pete Manias and Steve Crawford of El Paso Global Networks, Robert Onsgard of FPL Fibernet, and Jerry Finefrock of LDMI. Representing CompTel in this meeting were H. Russell Frisby, Jr., President, Robert McDowell, Vice President and Assistant General Counsel, and the undersigned attorney.

Sincerely,

Jonathan D. Lee

Jonathan D. Lee
Vice President,
Regulatory Affairs

CompTel

Wholesale Telecommunications Carriers & Dark Fiber

December 17, 2002

Introduction

- Dominion Telecom
- El Paso Global Networks
- FPL Fibernet

Network Investment

- CompTel members have invested significant capital to build their own networks.
  - Dominion Telecom: $600 million and 346,000 fiber miles
  - El Paso Global Networks: $500 million
  - FPL Fibernet: $350 million and 260,000 fiber miles

Unbundled Network Elements

- A healthy retail telecommunications market is necessary for a healthy wholesale market.
  - Wholesale carriers create competitive markets by competing directly with the ILECs.
  - Wholesale facilities create network diversity and redundancy.
  - Wholesale carriers sell to everyone: CLECs, ILECs, ISPs, wireless carriers, IXCs.
  - If the FCC restricts or eliminates UNEs, it will harm segments of the retail market, creating a dangerous domino effect.

Unbundled Network Elements

- Wholesale carriers use UNEs in the following ways:
  - UNEs allow wholesale carriers to avoid the “last mile” obstacle.
  - UNEs allow wholesale carriers to create redundancy in their own networks.
  - UNEs also allow wholesale carriers to complete sections of their network where it may not be cost-effective to build.

Unbundled Network Elements

- Wholesale carriers “add value” to UNEs.
  - Wholesale carriers often deploy complementary facilities in combination with the UNE, e.g., “lighting” dark fiber with optronics.
  - Wholesale carriers also differentiate services that are provided across the UNE through the deployment of, or connection to, the carrier’s own facilities, e.g., “five-9s” reliability.

Unbundled Network Elements

- In short, the FCC must maintain a broad list of UNEs, including the following:
  - High capacity loops
  - Interoffice transport
  - Dark fiber
  - Multiplexing
- Of these, dark fiber, is the most important UNE for competitive wholesale carriers

Dark Fiber-Definition

- The FCC should establish dark fiber as a separate UNE
  - The UNE should be defined as unlit fiber capable of providing a transmission path to, from, or between, points on the ILEC network.
  - The dark fiber UNE should include splicing, similar to DSL loop conditioning.
    - Many state commissions require splicing.
  - Dark fiber should be able to be used to provide carriage of any traffic the fiber can support, as long as the competitive carrier is using the fiber to provide a telecommunications service.

Dark Fiber-Impairment Issues

- Wholesale carriers face substantial impairment without access to the dark fiber UNE
  - Fiber deployment is characterized by high sunk costs and high minimum viable scale—both classic entry barriers.
  - Entrants face higher costs than those incurred by the incumbent , another classic entry barrier:
    - ROW costs and time to litigate, *e.g.*, City Signal Petition
    - Discriminatory building access terms

Dark Fiber-Impairment Issues

- Exclusionary behavior by BOCs substantially limits the ability of wholesale carriers to achieve minimum viable scale
  - Difficulties obtaining collocation to provide wholesale services, *e.g.*, Fiber Carriers' Petition, CC Docket No. 01-77.
  - BOC special access term and volume contracts foreclose substantial amounts of CLEC/IXC business.
  - BOCs' strategic pricing structure for special access raises minimum viable scale of entry.

Dark Fiber-No Use Restrictions

- Use restrictions on dark fiber will complete the total foreclosure of facilities-based wholesale carriers, stranding $Billions in CapEx, and eliminate the minimal competition that currently exists in the metro transport market
  - Use restrictions that foreclose those few customers that are available, e.g., wireless carriers.
  - Use restrictions that limit the type of traffic that can be carried by customers of wholesale carriers, e.g., exchange access and information services.
  - Will eliminate any pretense for deregulating transport markets (both UNE and special access).

Dark Fiber-State Role

- The impairment factors listed are largely factual and market-specific. Therefore, the FCC should define the dark fiber UNE, generally describe the bases for finding impairment (are there barriers to entry?), and delegate to the states the task of:
  - Determining whether barriers to entry exist for alternative fiber-based transport providers, or
  - Determining whether wholesale transport markets are workably competitive.

The Dark Fiber UNE Is Consistent With Goals of the Act

- Dark fiber unbundling requires, rather than discourages, facilities investment by competitors.
  - Lighting dark fiber requires significant optical equipment investment. 8 to 1 ratio (lighting versus laying). This stimulates equipment spending.
  - Dark fiber often creates beneficial network redundancy by supplementing competitor-deployed facilities.
  - Dark fiber allows wholesale carriers to leverage and encourage alternative facilities investment.

Conclusion

- Sustainable competition requires a vibrant wholesale telecommunications market.
  - The FCC must maintain the availability of a comprehensive set of UNEs at TELRIC-based rates.
  - The FCC should clarify dark fiber unbundling requirements and should not impose any restrictions on UNEs.
  - These actions will create regulatory certainty and promote facilities deployment.